

EXHIBIT 8

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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA – SANTA ROSA DIVISION

In re
 THE LEGACY ESTATE GROUP, LLC,
 formerly doing business as FREEMARK
 ABBEY WINERY, BRYON VINEYARD &
 WINERY, and ARROWOOD VINEYARD &
 WINERY,
 Debtor.

OFFICIAL COMMITTEE OF UNSECURED
 CREDITORS OF THE LEGACY ESTATE
 GROUP, LLC,

Plaintiff,

v.

JOHN M. BRYAN, JOHN M. AND
 FLORENCE E. BRYAN TRUST, J.M. BRYAN
 FAMILY TRUST, KULWINDER SIDHU,

Case No. 05-14659

Adv. No. 06-01173

Chapter 11

**DEFENDANTS AND CROSS-CLAIMANTS'
 MEMORANDUM OF POINTS AND
 AUTHORITIES OPPOSING A JUDICIAL
 DETERMINATION THAT THE JOHN M.
 AND FLORENCE E. BRYAN TRUST HAS
 WAIVED ITS RIGHT TO A JURY TRIAL**

Judge Hon. Alan Jaroslovsky

DEFENDANTS AND CROSS-CLAIMANTS' MEMORANDUM
 OF POINTS AND AUTHORITIES OPPOSING A JUDICIAL
 DETERMINATION THAT THE JOHN M. AND FLORENCE E.
 BRYAN TRUST HAS WAIVED ITS RIGHT TO A JURY TRIAL

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1 DEVINDER SIDHU, PACIFIC PARAGON
2 INVESTMENT FUND LTD, a British Columbia
3 company, HARRY CHEW, and AIC CAPITAL
4 PARTNERS, LLC, a California limited liability
company.

5 Defendants.

6 AND RELATED CROSS-CLAIM.
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28 DEFENDANTS AND CROSS-CLAIMANTS' MEMORANDUM
OF POINTS AND AUTHORITIES OPPOSING A JUDICIAL
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Defendants John M. Bryan, John M. and Florence E. Bryan Trust (“J&FB Trust”) and the J.M. Bryan Family Trust (collectively, the “Bryan Defendants”) hereby submit their opposition to Plaintiff’s brief in support of a judicial determination that the John M. and Florence E. Bryan Trust waived its right to a jury trial as follows:

I. INTRODUCTION

The issue before the Court is whether J&FB Trust has a right to have this matter heard in the District Court before a jury. Under California law, the answer is unequivocally yes. The Committee’s Brief fails to provide any legitimate basis for depriving J&FB Trust of this inalienable right to a jury trial in District Court, and indeed it cannot.

This is the Committee’s second attempt to defeat the J&FB Trust’s right to a jury trial. It had initially argued that the J&FB Trust operated “under the fictitious name ‘Sycamore Vineyards.’” *See*, Plaintiffs Opposition to Bryan Defendants’ Motion to Certify Proceeding to District Court at 2. In that pleading, the Committee argued that J&FB Trust had waived its right to a jury trial when Sycamore Vineyards filed its claim. The Committee maintained that Sycamore Vineyards was “little more than a fictitious name[] used by the J&FB Trust.” *Id.* at 3. The Committee, without explanation, has now abandoned its original theory and seeks to pursue a different theory altogether to justify denying the J&FB Trust of its right to a jury trial. It now claims that the J&FB Trust is the alter ego of Mr. Bryan. Both arguments are contrary to California law.

The Committee has offered no legal basis to support its argument that Mr. Bryan’s waiver of his right to a jury trial could be imputed to the J&FB Trust. Indeed, the Committee has offered no authority whatsoever to support the proposition that the waiver by a trust’s settlor of his right to a jury trial constitutes a waiver of the trust’s right to a jury trial. Likewise, the Committee’s alter ego argument is completely inapplicable to the J&FB Trust’s procedural rights. The Committee’s has now had two opportunities to attempt to impede the J&FB Trust’s demand for a jury and has utterly failed to provide any basis for its position. Enough is enough. This Court should grant the Bryan Defendants jury trial demand on behalf of the J&FB Trust.

II. LEGAL ARGUMENT

A. The J&FB Trust Is A Separate And Distinct Legal Entity

The Committee argues that “any rights asserted or waived by Mr. Bryan in this action must be considered in determining the rights of the trust because there is no functional distinction between a living settlor and his revocable trust as a matter of law.” Pl. Brief at 6. The Committee is wrong on this fundamental point of law. Under California law, it is axiomatic that a trust – here, the J&FB Trust – is a distinct legal entity, separate from its beneficiaries. *Torrey Pines Bank v. Hoffman*, 231 Cal.App.3d 308, 322, 282 Cal.Rptr. 354, 362 (1991) (“the trust is preserved as a separate legal entity.”)

The J&FB Trust is recognized under California Probate Law as a separate entity and qualifies for the exception to doctrine of merger pursuant to Probate Code §15209(b). The J&FB Trust is the revocable trust of John M. and Florence E. Bryan who are the settlors. The J&FB Trust was created as part of the Bryans personal estate plan. John Bryan Deposition Transcript (“Bryan Depo. Trans.”) at 38, 11-14, attached as Exhibit B to the Morris Declaration attached to Plaintiff’s Brief. John M. Bryan and Alan Brudos are the current trustees of the J&FB Trust. Bryan Depo Trans. at 43. While John M. and Florence E. Bryan are the beneficiaries of the J&FB Trust during their lifetimes, upon the death of the survivor of them, any then remaining balance of the J&FB Trust passes to the successor beneficiaries (who are not John M. or Florence E. Bryan). See Morris Declaration, Exhibit A, Trust Instrument. John Bryan and the J&FB Trust are separate and distinct legal entities.

Moreover, as the Committee has admitted through the allegations in its First Amended Complaint, the J&FB Trust is a separate and distinct legal entity. First Amended Complaint (“FAC”) 11:6-9. Accordingly, the J&FB trust is separately named as a defendant. FAC 2:13-16. All of the transactions upon which the Committee seeks to impose liability on the J&FB Trust were entered in the trust’s name. FAC at 5:12-27, 6:1-4, 7:10-23, 9:7-10, 9:19-2610:5-9, 11:6-9. Thus, the purported identity of Mr. Bryan and the J&FB Trust is belied by the Committee’s own allegations.

Most importantly, the Committee fails to produce any evidence in support of the notion that the J&FB Trust was utilized for any fraudulent purpose, or that there was any failure to comply with

1 trust requirements or otherwise adhere to formalities. In other words, even if the alter ego doctrine
2 were relevant to the question of loss of a revocable trust's procedural rights, the Committee has made
3 absolutely no showing whosoever that the doctrine is applicable here.

4 B. The J&FB Trust Has a Right to a Jury Trial

5 The Seventh Amendment grants the right of jury trial in civil cases in the context of
6 bankruptcy proceedings if the case involves legal rights. *Granfinanciera v. Nordberg*, 492 U.S. 33
7 (1989). A party is entitled to a jury trial if (1) the action would have been brought at a court of law as
8 opposed to equity in England prior to the merger of the courts of law and equity, (2) the remedy
9 sought is legal in nature, and (3) the action involves a private rather than public right. *Id.* at 50-51.
10 The J&FB Trust has preserved its right to a jury trial by making a timely jury demands in its Answer
11 and its Cross-Claims both filed on January 5, 2007. J&FB has never filed a Proof of Claim or
12 otherwise waived its right to trial by jury, and it has not consented to a jury trial in Bankruptcy Court.
13 The J&FB Trust satisfies the legal standard and should be permitted to have its case heard in the
14 District Court by a jury.

15 C. Probate Code Section 15800 does Not Support Waiver of J&FB's Right to a Jury Trial

16 While California Probate Code Section 15800 may allow the Committee to look to the assets
17 of Mr. Bryan held in the trust for satisfaction of a judgment, there is nothing in the Probate Code to
18 support the notion that a right to execute on a judgment is tantamount to waiver of a jury trial right.
19 Quite the contrary, a settlor acting as a trustee (as is Mr. Bryan) is acting in a fiduciary capacity as
20 trustee as defined under California Probate Code §39. The Probate Code imposes upon all trustees
21 (and settlors) certain duties as identified in Probate Code §§16000-16105. Probate Code §16010
22 imposes upon a trustee a duty to defend claims and §16011 imposes a duty to defend actions.
23 Nowhere in the Probate Code does it state that a waiver of a right by the trustee or settlor of a Trust in
24 his individual capacity constitutes a waiver by the Trust. Bryan never waived a right to trial by jury
25 in his capacity as settlor of the J&FB Trust. Therefore, Bryan could not have waived J&FB's right to
26 a jury trial.

1 D. The Committee Cannot Establish That Mr. Bryan's Waiver Should Be Imputed to The
 2 J&FB Trust

3 The Committee urges the Court to impute Mr. Bryan's waiver of his right to a jury trial to the
 4 J&FB Trust because, it argues, the J&FB Trust is the "alter ego" of Mr. Bryan. See Plaintiffs Brief in
 5 Support of a Judicial Determination that the J&FB Trust Has Waived Its Right to a Jury Trial ("Pl.
 6 Brief"). This argument is flawed for several reasons.

7 1. The Alter Ego Doctrine Does Not Apply

8 The alter ego doctrine is "an extreme remedy, sparingly used." *Sonora Diamond Corp. v.*
 9 *Tuolumne County*, 83 Cal. App. 4th 523, 539 (2000). Generally, equity requires the application of the
 10 alter ego doctrine when the "corporate form is used to perpetrate a fraud, circumvent a statute, or
 11 accomplish some other wrongful or inequitable purpose." *Id.* at 538. The doctrine is designed to
 12 prevent a party from using the structure to shield itself from liability. It applies where (1) there is
 13 such unity of interest and ownership that the personalities of the corporation and individual are no
 14 longer separate, and (2) an inequitable result will follow if acts are treated as those of the corporation
 15 alone. *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (2001). However, "[t]here is no litmus test to
 16 determine when the corporate veil will be pierced; rather the result will depend on the circumstances
 17 of each particular case." *Mesler v. Bragg Management Co.*, 39 Cal.3d 290, 300 (1985).

18 ***The Committee has failed to cite a single case for the proposition that the alter ego doctrine***
 19 ***can be used against a party to force a waiver of the constitutional right to trial by jury.*** The two
 20 cases cited by the Committee, *Cohen v. United States*, 1998 WL 953979 (1998) and *Torrey Pines*
 21 *Bank v. Hoffman*, 231 Cal. App. 3d 308 (1991) are garden variety alter ego cases in which judgment
 22 creditors invoked the alter ego doctrine to collect a judgment. These cases are not applicable here
 23 because the alter ego doctrine cannot be invoked to eliminate the right to trial by jury. The right to a
 24 jury trial is guaranteed by the Seventh Amendment to the U.S. Constitution and courts indulge every
 25 reasonable presumption against waiver. *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389 (1937) (the right to
 26 jury trial is fundamental).

2. Mr. Bryan and the J&FB Trust Are Separate Entities

Even if the alter ego doctrine applied, a Court order allowing a party to pierce the corporate veil does not equate to a court order dismantling the entire entity. Even if a court determines that a trust may be pierced to collect on a judgment, the trust remains a distinct entity. The Committee argues that “Mr. Bryan and the J&FB Trust are one and the same entity for purposes of this court's equitable jurisdiction.” This argument is flawed. *See* 5 Witkin, SUMMARY OF CAL. LAW (10th ed. 2005) Torts, § 74, p. 149 (the alter ego doctrine is not designed to collapse two entities into one.)

The viability of a corporation and, by analogy, a trust is not affected by the application of the alter ego doctrine. In *Suhl v. Bumb*, the court refused to dissolve the corporate structure in its application of the alter ego doctrine. 348 F.2d 869 (9th Cir. 1965) as it explained:

The fact that the relationship between an individual and the corporation is such that he may be liable for the obligations of the corporation does not mean that the individual's assets are those of the corporation, or that he 'is' the Corporation and is a bankrupt along with the corporation.

Id., 348 F.2d at 874.

Similarly, the court in *Mesler* differentiated between disregarding the corporate structure and dissolving the corporation. *Mesler*, 39 Cal. 3d at 300. The doctrine requires only that “under certain circumstances a hole will be drilled in the wall of limited liability erected by the corporate form; for all purposes other than that for which the hole was drilled, the wall still stands.” *Id.* at 301. The court in *McLoughlin* did not merge the two corporations with common ownership and control and found that “any legitimate objectives to be gained by having two separate corporate entities . . . remain undisturbed. All that the judgment requires is that the alter ego corporation be considered as being a party to the bargaining agreement executed by the dominant corporation: *McLoughlin*, 206 Cal. App. 2d at 854.

The Committee cites no California cases in which the court found that the corporate entity dissolves or otherwise loses all legal rights as a result of the application of the alter ego doctrine. In fact, California has no such cases. *See Kohn v. Kohn*, 95 Cal. App. 2d 708 (1950) (“the Federal Investment Company still stands”), *A. L. Judelson*, 89 Cal. App. 2d 256 (“The corporation is an entity

1 separate and distinct from the component persons even though under exceptional circumstances the
2 corporation may be disregarded when it is only the double or alter ego of the person composing it”).

3 The Committee misinterprets the alter ego doctrine in asking the court to merge Mr. Bryan
4 and the J&FB Trust. The Committee has utterly failed to meet its burden of establishing that the alter
5 ego doctrine applies to Mr. Bryan and the J&FB Trust. But, even had this burden been met, it would
6 apply solely to the right to execute on the trust’s assets in the event of a judgment against Mr. Bryan.
7 The Committee has failed to cite any authority to support the proposition that even if the alter ego
8 doctrine were applicable, the J&FB Trust loses all of its legal rights, including the right to trial by
9 jury.

10 Mr. Bryan waived his right to a jury trial in his individual capacity. Mr. Bryan is one of the
11 two trustees of the J&FB Trust¹. However, Mr. Bryan, as trustee, did not waive the J&FB Trust’s
12 right to a jury trial. Mr. Bryan’s waiver cannot be imputed to the J&FB Trust under the alter ego
13 doctrine because the two are separate entities.

14 **III. CONCLUSION**

15 The Committee asks this Court to make new law and find that a revocable trust loses its procedural
16 rights and protections where such rights are waived by its settlor or trustee purely in his individual
17 capacity. This Court should decline the invitation. Rights as basic and elemental as the Constitutional
18 right to trial by jury should not be quashed in the absence of solid legal authority. Here, no such
19 authority exists. And in the absence of any legal basis for the Committee’s position, the correct
20 analysis is simple and straightforward: Since the J&FB Trust did not file a proof of claim in the
21 Bankruptcy Court, it did not waive its right to a jury trial. The alter ego doctrine cannot deprive a
22 party of a right to trial by jury, and in any event, does not apply here. Therefore, the claims against
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27 ¹ The other trustee of the J&FB Trust is Alan R. Brudos.

1 the J&FB Trust, and the claims asserted by it, must be adjudicated in the District Court before a jury
2 trial.

3 Respectfully submitted,

4 Dated: September 25, 2007

NIXON PEABODY LLP

5
6 By: /s/ GLENN WESTREICH
7 GLENN E. WESTREICH
8 BETH L. MITCHELL
9 ROSALYN P. MITCHELL
10 Attorneys for Defendants/Cross-Claimants
11 JOHN M. BRYAN, JOHN M. AND
12 FLORENCE E. BRYAN TRUST, J.M. BRYAN
13 FAMILY TRUST
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EXHIBIT 9

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10 Co-Counsel for Plaintiff, The Official Committee
 of Unsecured Creditors

11 UNITED STATES BANKRUPTCY COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 In re)
)
 14 THE LEGACY ESTATE GROUP, LLC, a)
 California limited liability company, formerly)
 15 d/b/a FREEMARK ABBEY WINERY,)
 BYRON VINEYARD & WINERY, AND)
 16 ARROWOOD VINEYARD & WINERY,)
)
 17 Debtor.)

Case No. 05-14659 AJ
 (Chapter 11)
 AP No. 06-1173 AJ

18 OFFICIAL COMMITTEE OF UNSECURED)
 CREDITORS OF THE LEGACY ESTATE)
 19 GROUP,)
)
 20 Plaintiff,)
 v.)
 21)

**NOTICE TO APPEAR
 AT TRIAL IN LIEU OF
 SUBPOENA**

22 JOHN M. BRYAN, JOHN M. AND FLORENCE)
 E. BRYAN TRUST, J.M. BRYAN FAMILY)
 TRUST, KULWINDER SIDHU, DEVINDER)
 23 SIDHU, PACIFIC PARAGON INVESTMENT)
 FUND, LTD., a British Columbia company,)
 24 HARRY CHEW, and AIC CAPITAL PARTNERS,)
 LLC, a California limited liability company,)
 25)
 AND RELATED CROSS-ACTION.)
 26)

1 TO DEFENDANTS JOHN M. BRYAN AND THE JOHN M. AND FLORENCE E.
2 BRYAN TRUST, care of their attorney of record:

3 NOTICE IS HEREBY GIVEN pursuant to the provisions of California Code of Civil
4 Procedure Section 1987(b), made applicable to this action by Bankruptcy Rule 9016 and
5 F.R.Civ.P. 45(b)(2), the Defendant John M. Bryan, individually and in his capacity as Trustee of
6 the John M. Bryan and Florence E. Bryan Trust are directed to attend the trial of this action and
7 testify therein.

8 The trial is being conducted and the appearance is required on September 27, 2007, at
9 10:00 a.m., at the U.S. Bankruptcy Court, Northern District of California, 99 South E. Street,
10 Santa Rosa, CA 95402.

11 Dated: September 25, 2007

12 /s/ John H. MacConaghy
13 John H. MacConaghy
14 Attorneys for Plaintiff
15 Official Unsecured Creditors Committee
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EXHIBIT 10

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 CREDITORS OF THE LEGACY ESTATE)
 19 GROUP,)

20 Plaintiff,)
 v.)

21 JOHN M. BRYAN, JOHN M. AND FLORENCE)
 22 E. BRYAN TRUST, J.M. BRYAN FAMILY)
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Case No. 05-14659 AJ
 (Chapter 11)

AP No. 06-1173 AJ

**EX PARTE APPLICATION
 FOR ORDER SHORTENING
 TIME IN WHICH TO SERVE
 NOTICE TO APPEAR
 AT TRIAL IN LIEU OF
 SUBPOENA**

ORDER SHORTENING TIME

1 The Plaintiff Official Unsecured Creditors Committee of the Estate of The Legacy Estate
2 Group, LLC hereby applies to the Court for an Order Shortening Time in which to serve its "Notice to
3 Appear at Trial in Lieu of Subpoena" from ten to two (2) days, based on the following declaration of
4 John H. MacConaghy.

5 I, John H. MacConaghy, state:

6 1. I am an attorney admitted to the bar of this Court and am co-counsel of record for the
7 Plaintiff Official Committee of Unsecured Creditors in this action.

8 2. This action is set for an evidentiary hearing on September 27, 2007, pursuant to
9 various Orders of this Court. The limited issue to be tried is whether the Defendant John M. And
10 Florence E. Bryan Trust has waived its right to a jury trial by the filing of various proofs of claim by its
11 Settlor, Trustee, and Beneficiary John M. Bryan and its wholly owned partnership Sycamore
12 Vineyards. When this evidentiary hearing was set, the Court directed declarations in lieu of direct
13 testimony to be submitted prior to trial.

14 3. Although the Court's standard procedure is for the declarations to be submitted five or
15 seven days prior to trial, due to the High Holiday on Friday and Saturday, 9/21 and 9/22, the Plaintiff
16 agreed that the Defendant Bryan could submit his filings on September 25. Plaintiff nonetheless filed its
17 papers on September 19, 2007. On September 25 at approximately 10:00 p.m., the Defendant Bryan
18 filed its opposition brief, but filed no Declaration of John Bryan in Lieu of Direct Testimony. This was
19 the first Plaintiff learned that the Defendants would not be voluntarily making Mr. Bryan available as a
20 witness at the September 27 evidentiary hearing.

21 4. Although Plaintiff can present the necessary evidence through Mr. Bryan's deposition
22 transcript to establish that the John M. and Florence E. Bryan Trust has effectively filed proofs of claim
23 and submitted to this Court's equitable jurisdiction, Plaintiff's case will be presented more efficiently
24 and dramatically through the live testimony of Mr. Bryan. Plaintiff seeks to compel his appearance at
25 the 9/27 evidentiary hearing.

26 5. California Code of Civil Procedure Section 1987(b), made applicable to this action by

1 Bankruptcy Rule 9016 and F.R.Civ.P. 45(b)(2), provides that a party to a civil action may be
2 compelled to appear and testify at trial by a notice in lieu of subpoena. The statute provides that the
3 notice must be served "at least 10 days before the time required for attendance unless the court
4 prescribes a shorter time."

5 6. I have earlier today caused a "Notice to Appear at Trial in Lieu of Subpoena" to be
6 filed and served on Mr. Bryan care of his counsel of record. Good cause exists to shorten the time for
7 service of this Notice to 2 days. Had Plaintiff insisted on the Defendant submitting his pretrial filings last
8 week, we would have learned by that time that Mr. Bryan did not intend to voluntarily appear and we
9 would have been able to serve him with a subpoena at either his home or business address. Compelling
10 Mr. Bryan's appearance will aid in the just resolution of the issue before the Court on September 27.

11 7. I appeared at Mr. Bryan's day - long deposition on September 14, 2007, and he was
12 clearly physically and mentally fit to testify throughout the day.

13 I declare under penalty of perjury of the laws of the United States that the foregoing is true and
14 correct, that I have personal first hand knowledge thereto, that if called as a witness I could and would
15 testify competently thereto, and that this declaration is executed on September 25, 2007 at Sonoma,
16 California.

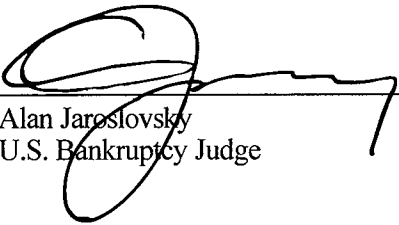
17 /s/ John H. MacConaghy
18 John H. MacConaghy
19 Attorneys for Plaintiff
20 Official Unsecured Creditors Committee
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ORDER SHORTENING TIME

On consideration the Plaintiff's application and good cause appearing:

IT IS HEREBY ORDERED that the time in which the Plaintiff may serve its Notice to Appear at Trial in Lieu of Subpoena on the Defendant John M. Bryan, individually and as Trustee of the John M. And Florence E. Bryan Trust is shortened to two (2) days.

Dated: September 26, 2007



Alan Jaroslovsky
U.S. Bankruptcy Judge

EXHIBIT 11

Entered on Docket

September 26, 2007

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**WINSTON & STRAWN LLP**

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Co-Counsel for Plaintiff, The Official Committee
of Unsecured CreditorsUNITED STATES BANKRUPTCY COURT
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California limited liability company, formerly)

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BYRON VINEYARD & WINERY, AND)

ARROWOOD VINEYARD & WINERY,)

Debtor.)

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Plaintiff,)

v.)

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TRUST, KULWINDER SIDHU, DEVINDER)

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4 John H. MacConaghy.

5 I, John H. MacConaghy, state:

6 1. I am an attorney admitted to the bar of this Court and am co-counsel of record for the
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13 testimony to be submitted prior to trial.

14 3. Although the Court's standard procedure is for the declarations to be submitted five or
15 seven days prior to trial, due to the High Holiday on Friday and Saturday, 9/21 and 9/22, the Plaintiff
16 agreed that the Defendant Bryan could submit his filings on September 25. Plaintiff nonetheless filed its
17 papers on September 19, 2007. On September 25 at approximately 10:00 p.m., the Defendant Bryan
18 filed its opposition brief, but filed no Declaration of John Bryan in Lieu of Direct Testimony. This was
19 the first Plaintiff learned that the Defendants would not be voluntarily making Mr. Bryan available as a
20 witness at the September 27 evidentiary hearing.

21 4. Although Plaintiff can present the necessary evidence through Mr. Bryan's deposition
22 transcript to establish that the John M. and Florence E. Bryan Trust has effectively filed proofs of claim
23 and submitted to this Court's equitable jurisdiction, Plaintiff's case will be presented more efficiently
24 and dramatically through the live testimony of Mr. Bryan. Plaintiff seeks to compel his appearance at
25 the 9/27 evidentiary hearing.

26 5. California Code of Civil Procedure Section 1987(b), made applicable to this action by

1 Bankruptcy Rule 9016 and F.R.Civ.P. 45(b)(2), provides that a party to a civil action may be
2 compelled to appear and testify at trial by a notice in lieu of subpoena. The statute provides that the
3 notice must be served "at least 10 days before the time required for attendance unless the court
4 prescribes a shorter time."

5 6. I have earlier today caused a "Notice to Appear at Trial in Lieu of Subpoena" to be
6 filed and served on Mr. Bryan care of his counsel of record. Good cause exists to shorten the time for
7 service of this Notice to 2 days. Had Plaintiff insisted on the Defendant submitting his pretrial filings last
8 week, we would have learned by that time that Mr. Bryan did not intend to voluntarily appear and we
9 would have been able to serve him with a subpoena at either his home or business address. Compelling
10 Mr. Bryan's appearance will aid in the just resolution of the issue before the Court on September 27.

11 7. I appeared at Mr. Bryan's day - long deposition on September 14, 2007, and he was
12 clearly physically and mentally fit to testify throughout the day.

13 I declare under penalty of perjury of the laws of the United States that the foregoing is true and
14 correct, that I have personal first hand knowledge thereto, that if called as a witness I could and would
15 testify competently thereto, and that this declaration is executed on September 25, 2007 at Sonoma,
16 California.

17 /s/ John H. MacConaghy
18 John H. MacConaghy
19 Attorneys for Plaintiff
20 Official Unsecured Creditors Committee
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ORDER SHORTENING TIME

On consideration the Plaintiff's application and good cause appearing:

IT IS HEREBY ORDERED that the time in which the Plaintiff may serve its Notice to Appear at Trial in Lieu of Subpoena on the Defendant John M. Bryan, individually and as Trustee of the John M. And Florence E. Bryan Trust is shortened to two (2) days.

Dated: September 26, 2007



Alan Jaroslovsky
U.S. Bankruptcy Judge